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IN THE
COURT OF APPEALS OF INDIANA

CHESTER LLOYD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0704-CR-356
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
ROOM NUMBER 2
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0411-FB-51

March 18, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Chester Lloyd (Lloyd), appeals his conviction for two Counts of sexual misconduct with a minor, Class B felonies, Ind. Code § 35-42-4-9(a).

We affirm.

ISSUE

Lloyd raises one issue on appeal which we restate as follows: Whether the trial court abused its discretion by sentencing him to an aggregate sentence of thirty years.

FACTS AND PROCEDURAL HISTORY

On August 12, 2004, police officers with the Lafayette Police Department were called to Stonecrest Apartments regarding a complaint about an unwanted guest. When they arrived at the apartment building, they found Lloyd pounding on the door of apartment 337 and refusing to leave the premises. The officers spoke with Jacqueline Turpin, a neighbor, who informed them that forty-four-year-old Lloyd had purchased alcoholic beverages for two juvenile girls in apartment 336, sixteen-year-old B.C. and fifteen-year-old J.T. The girls had gone to Turpin's apartment in an attempt to avoid Lloyd who insisted on having sex with B.C. Turpin called the police when Lloyd refused to leave.

The juveniles told the officers that they had accompanied Lloyd to a liquor store the previous evening. Lloyd bought a bottle of Vodka and they then went to apartment 337. While drinking the alcohol, Lloyd kissed and fondled B.C. The girls also informed the officers that Lloyd wanted to have sexual intercourse with B.C., but she had refused. The officers arrested Lloyd. When interviewing the girls again a few days later, the officers

discovered that Lloyd had had sexual intercourse with J.T. approximately five times in the two weeks prior to his arrest.

On November 1, 2004, the State filed an Information, charging Lloyd with Count I, sexual misconduct with a minor, as a Class C felony, I.C. § 35-42-4-9(b); Counts II-VI, sexual misconduct with a minor, as Class B felonies, I.C. § 35-42-4-9(a); Counts VII and IX, furnishing alcoholic beverages to a minor, Class C misdemeanors, I.C. § 7.1-5-7-8; and Counts VIII and X, contributing to the delinquency of a minor, Class A misdemeanors, I.C. § 35-46-1-8. That same day, the State filed a notice of intent to file an habitual offender sentencing enhancement. However, when examined by two psychiatrists in February of 2005, Lloyd was found incompetent to stand trial. He was mentally disturbed, interrupted by hallucinations, and seemed to respond to unseen stimuli. He failed to understand the scope of the charges against him, the role of many courtroom personnel, or the nature of courtroom proceedings. On May 31, 2005, Lloyd was transferred to Logansport State Hospital where he was treated with psychotherapy, medications, and counseling. In March of 2006, he was deemed competent to stand trial.

On November 9, 2006, Lloyd and the State entered into a plea agreement, wherein Lloyd agreed to plead guilty but mentally ill to two Counts of sexual misconduct with a minor, as Class B felonies, in exchange for the State's dismissal of the remaining charges. The plea agreement left sentencing up to the discretion of the trial court. On March 27, 2007, the trial court conducted a sentencing hearing. Although the parties had agreed in the plea agreement that Lloyd would plead guilty but mentally ill, he ultimately entered pleas of

guilty to the two Counts of sexual misconduct with a minor. After hearing the evidence, the trial court sentenced Lloyd as follows, in pertinent part:

> Certainly [Lloyd] has a very lengthy criminal record and some very serious charges, and those are aggravating factors going back twenty – almost twenty years ago to the robbery conviction followed by grand larceny, carrying a concealed weapon by a convicted felon
>
> * * *
>
> Assault, several assaults, malicious mischief, burglary of a dwelling house, and then the possession of cocaine, possession of marijuana and these charges. And it looks like one of the considerations for [Lloyd's] plea was not to go to trial on the habitual offender count, which would have exposed [Lloyd] to additional lengthy imprisonment. It's getting harder and harder to predict what the [c]ourt of [a]ppeals believes are appropriate factors to consider in imposing consecutive sentences. I do, you know, think that [Lloyd] requires at least a maximum sentence on at least one count and so on count two I'm going to impose the sentence of twenty years. I don't think he needs to serve maximum sentences on two different counts. I agree that the recommendation of the probation department is appropriate and so on count three I'm going to impose a sentence of ten years to run consecutive to count two so that in the event the [c]ourt of [a]ppeals determines that this is not the appropriate case for a consecutive sentence there's at least one twenty year sentence in place. I do think this is an appropriate case for consecutive sentence because of [Lloyd's] extensive record, because of the fact that the --- he would have been eligible for a habitual offender sentence, and because of the multiple offenses with these two girls. And then the other incident which has only been touched here is there looks like he was getting ready to attempt to get another victim engaged. He actually was charged with contributing to the delinquency and her resist --- he was --- you know, he was trying to get her involved and she resisted. I mean, I suppose it's not the worst case because when she resisted he didn't persist but they had to flee from you to a neighbor's. And the --- a child of that age is not capable of consent and so it's the crime --- the law doesn't recognize consent as a defense to the crime. So I'm going to impose a sentence of --- total sentence of thirty years to be fully executed in the Department of Correction. [Lloyd] gets credit for nine hundred and seven days spent incarcerated prior to sentencing together with equivalent good time.

(Transcript pp. 10-12).

Lloyd now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Lloyd contends that an aggregate sentence of thirty years is not appropriate.[1] Specifically, Lloyd maintains that the trial court failed to consider his mental illness as a mitigator. With regard to the aggravators, Lloyd argues that the trial court improperly considered the fact that there were multiple victims and erroneously placed too much weight on his criminal history. Additionally, Lloyd claims the sentence is inappropriate in light of the nature of the offense and his character.

I. *Standard of Review*

At the outset, we note that sentencing decisions are within the trial court's discretion, and will be reversed only upon a showing of abuse of discretion. *Powell v. State*, 751 N.E.2d 311, 314 (Ind. Ct. App. 2001). The trial court's sentencing discretion includes the determination of whether to increase presumptive penalties. *Madden v. State*, 697 N.E.2d 964, 967 (Ind. Ct. App. 1998), *trans. denied*. In doing so, the trial court determines which aggravating and mitigating circumstances to consider, and is solely responsible for determining the weight to accord to each of these factors. *Perry v. State*, 751 N.E.2d 306, 309 (Ind. Ct. App. 2001). The sentencing statement must: (1) identify significant aggravating and mitigating circumstances; (2) state the specific reason why each circumstance is aggravating and mitigating; and (3) demonstrate that the aggravating and mitigating circumstances have been weighed to determine that the aggravators outweigh the

mitigators. *Powell,* 751 N.E.2d at 315. We examine both the written sentencing order and the trial court's comments at the sentencing hearing to determine whether the trial court adequately explained the reasons for the sentence. *Id.* A sentence enhancement will be affirmed, if after due consideration of the trial court's decision, this court finds that the sentence was appropriate in light of the nature of the offense and the character of the offender. *See* App. R. 7(B); *Rodriguez v. State*, 785 N.E.2d 1169, 1174 (Ind. Ct. App. 2003), *trans. denied*.

II. *Imposition of an Enhanced Sentence*

First, Lloyd argues that the trial court improperly relied on his criminal history and "the multiple offenses with victims" to aggravate his sentence, while at the same time, the trial court failed to include his long history of mental illness as a mitigator. (Appellant's App. p. 27). According to the written sentencing order, the trial court found three aggravators: (1) Lloyd's criminal history; (2) prior unsuccessful attempts at rehabilitation; and (3) multiple offenses with victims. The trial court failed to find any mitigators. Finding the aggravators to outweigh, the trial court imposed twenty years on Count II, sexual misconduct with a minor, and ten years on Count III, sexual misconduct with a minor; both Counts are Class B felonies. The trial court ordered both sentences to run consecutively. The presumptive sentence for a Class B felony is ten years, with not more than ten years added for aggravating circumstances or not more than four years subtracted for mitigating circumstances. I.C. § 35-50-2-5.

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[1] As the offenses to which Lloyd pled guilty occurred in the summer of 2004, before the new Indiana

A. *Mitigating Circumstances*

Lloyd contends that the trial court abused its discretion by failing to consider his mental illness as a mitigator. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Matshazi v. State*, 804 N.E.2d 1232, 1239 (Ind. Ct. App. 2004), *trans. denied* (quoting *Firestone v. State*, 774 N.E.2d 109, 114 (Ind. Ct. App. 2002)). Additionally, trial courts are not required to include within the record a statement that it considered all proffered mitigating circumstances, only those that it considered significant. *Id.*

Nonetheless, after either a finding of mental illness or a plea of guilty but mentally ill, the trial court should at a minimum carefully consider on the record what mitigating weight, if any, to accord to any evidence of mental illness, even though there is no obligation to give the evidence the same weight the defendant does. *Smith v. State*, 770 N.E.2d 818, 823 (Ind. 2002). As we have explained before, there are several factors that bear on this determination, including: (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. *Id.*

Applying these criteria here, we agree with Lloyd that the trial court erred in not finding his history of mental illness to be of some mitigating value. The record supports a

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sentencing statutes became effective in April 2005, we will apply the presumptive sentencing scheme.

long history of mental illness. In approximately 2001, Lloyd was diagnosed by the Mississipi Department of Mental Health with Major Depressive Disorder, Alcohol Abuse, Impulse Control Disorder, Antisocial Personality traits, and Mild Mental Retardation. He received treatment in Mississippi between 2001 and 2002, and had four days of inpatient basis at Wabash Valley Hospital in 2004. During a psychiatric evaluation in February of 2005, Lloyd exhibited paranoid delusional thinking, experienced hallucinations, heard voices, responded to unseen and auditory stimuli and had a low intellectual functioning. Lloyd was diagnosed with paranoid schizophrenia and alcohol and cocaine dependence while in Logansport State Hospital in 2005 and 2006.

On October 15, 2006, Dr. Jeffrey Wendt (Dr. Wendt), a forensic psychologist reported Lloyd to be mentally retarded and suffering from paranoid schizophrenia. Additionally, Dr. Wendt noted Lloyd's long history of noncompliance with taking his prescribed medications. Nevertheless, based on the available evidence, Dr. Wendt opined that Lloyd did not suffer from psychotic thought at the time of the arrest and did not experience erotic delusions when the sexual misconduct took place. Despite Lloyd's limited intellectual ability and history of psychotic disorders, Dr. Wendt found him capable of appreciating the wrongfulness of his conduct.

On the specific facts of this case, the trial court should have assigned some weight to defendant's mental illness as a mitigating factor as it is uncontroverted that Lloyd suffers from a mental illness. While we agree with the State that there is no clear nexus between Lloyd's illness and the sexual misconduct, there is a sufficient showing of his illness to

require it to be considered in sentencing. In light of Lloyd's chronic mental disorder, we conclude that his mental illness should have been given some weight as a mitigator. Thus, we find that the trial court abused its discretion.

B. *Aggravating Circumstances*

Lloyd next contends that the trial court improperly relied on his criminal history and the "multiple offenses with victims" to aggravate his sentence. (Appellant's App. p. 27). Even though we agree with Lloyd that he does not have any prior violations involving sexual contact with a minor, his criminal history is nonetheless impressive. Over the course of more than twenty years, he has been convicted for robbery, grand larceny, carrying a concealed weapon by a convicted felon, two counts of assaults, burglary, and other crimes. His most recent convictions date from 2003 and 2004 when he was convicted, respectively, of possession of cocaine, as a Class C felony and possession of marijuana, as a Class A misdemeanor. At the time of the instant offense, he was on probation. Despite the fact that Lloyd's previous crimes are not similar in nature to the current charge, his criminal history is nevertheless indicative of a failure to be rehabilitated and an escalation to serious drug and sexual offenses. As such, we find that the trial court properly considered his criminal history as an aggravator. *See Powell*, 751 N.E.2d at 314.

Turning to the trial court's second aggravator—multiple offenses with victims—we note that "[i]t is a well established principle that the fact of multiple crimes or victims constitutes a valid aggravating circumstance that a trial court may consider in imposing consecutive or enhanced sentences." *O'Connell v. State*, 742 N.E.2d 943, 952 (Ind. 2001)

(quoting *Noojin v. State*, 730 N.E.2d 672, 679 (Ind. 2000)). Here, Lloyd pled guilty to two counts of sexual misconduct with J.T. Based on this, we conclude that the trial court did not abuse its discretion in relying on Lloyd's multiple offenses in the instant cause as an aggravator. *See id.*

C. *Weighing of Aggravators and Mitigators*

In the instant case, it is our determination that the trial court did not abuse its discretion when sentencing Lloyd. *See id.* Even now, with assigning some weight to the mental illness mitigator, we find that the trial court properly imposed an enhanced sentence as the aggravators outweigh the mitigator. Nevertheless, Lloyd also asserts that his sentence was inappropriate in light of the nature of the offense and the character of the offender.

III. *Inappropriate Sentence*

A sentence, which is authorized by statute, will not be revised unless it is inappropriate in light of the nature of the offense and character of the offender. App. R. 7(B); *Rodriguez*, 785 N.E.2d at 1174. As previously mentioned, Lloyd was sentenced to the maximum, enhanced sentence of twenty years on Count II and the presumptive sentence of ten years on Count III, with sentences to run consecutively for an aggregate sentence of thirty years. When reviewing whether a defendant was properly sentenced, we consider whether the sentence is appropriate considering the "nature of the offense" and the "character of the offender." *See* App. R. 7(B).

With regard to the character of the offender, we note that Lloyd is mentally retarded with a long history of mental illness, has low intellectual functioning, is illiterate, and

hallucinates at times. The record shows that he appreciated the wrongfulness of his actions at the time of the offense. Not only does he have a significant criminal history, his criminal actions appear to escalate to serious drug and sexual offenses and he does not appear to be deterred by his numerous previous convictions and periods of incarceration. With regard to the nature of the crime, we note that Lloyd knew the girls were underage, yet he continued to purchase alcohol for them and to manipulate them into performing sex acts. Based on the totality of the circumstances before us, we conclude that the trial court was within its discretion in imposing his sentence. *See* App. R. 7(B); *see also Rodriguez*, 785 N.E.2d at 1174.

CONCLUSION

Based on the foregoing, we conclude that the trial court appropriately sentenced Lloyd.

Affirmed.

KIRSCH, J., and MAY, J., concur.